

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	James Stewart McCormick, et al.
	:	
For	:	METHOD AND APPARATUS FOR
	:	NETWORK ELEMENT RESOURCE
	:	UTILIZATION TRACKING
	:	
Serial No.	:	10/670,257
	:	
Filed	:	September 26, 2003
	:	
Art Unit	:	2478
	:	
Examiner	:	Scott M. Sciacca
	:	
Att. Docket	:	ALC 3408
	:	
Confirmation No.	:	4907

**REPLY BRIEF**

Mail Stop Appeal Brief Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Appellant respectfully submits this Reply Brief in response to the Examiner's

Answer mailed on July 11, 2011.

## **I. STATUS OF CLAIMS**

Claims 1-4, 6-20, 22-34, 36-39, and 41-46 are on appeal.

Claims 1-4, 6-20, 22-34, 36-39, and 41-46 are pending.

Claims 5, 21, 35, and 40 are canceled.

No claims are withdrawn.

No claims are allowed.

Claims 1-4, 6-20, 22-34, 36-39, and 41-46 are rejected.

## **II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The following grounds of rejection are presented for review:

A. On pages 2-13, the Office Action rejects claims 1-4, 6-20, 22-34, 36-39, and 41-46 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,673,253 to Shaffer ("Shaffer") in view of U.S. Patent No. 7,143,153 to Black et al ("Black"), further in view of U.S. Patent No. 5,223,827 to Bell et al ("Bell").

### III. ARGUMENT

In section (10) entitled "Response to Argument", starting on page 16, the Examiner's Answer puts forth several new arguments in response to Appellant's Appeal Brief. Appellant will respond to each of the Examiner's new arguments in turn.

On page 17, the Examiner alleges that "a key portion of Shaffer's disclosure" has been ignored. In response, Appellant respectfully submits that the Examiner has ignored a key portion of the claims. According to M.P.E.P. § 2143.03, "all words in a claim must be considered in judging the patentability of that claim against the prior art." See *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). Here, the Examiner's rejections do not consider all words in the independent claims, as described in detail below.

On page 18, the Examiner relies upon Shaffer for "98% capacity for line shelves and a 95% capacity for switching fabric." In response, Appellant respectfully submits that the independent claims recite both a utilization threshold and a specified threshold for each specified type of resource. In contrast, the Examiner's rejection only establishes one paramater that is variable, a percentage of capacity.

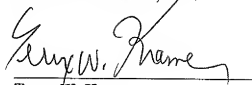
According to M.P.E.P. § 2111, the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. See *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999). Here, Appellant respectfully submits that the Examiner's interpretation of "both a utilization threshold and a specified threshold for each specified type of resource" is unreasonable.

Those skilled in the art would conclude that this language must require two different thresholds for each type of resource, not a single parameter that is related to a percentage of capacity. As defined, for example, in paragraph [0036] of the published version of the specification, allowing for “different thresholds to be set for different connection resources” allows for “thresholds to be expressed in absolute terms rather than as a percentage of capacity of the resource.” Consequently, Shaffer’s disclosure of a percentage of capacity teaches away from this subject matter.

#### CONCLUSION

For at least the reasons discussed above, Appellant respectfully submits that the rejections are in error and that claims 1-4, 6-20, 22-34, 36-39, and 41-46 are in condition for allowance. Therefore, Appellant respectfully requests that this Honorable Board reverse the rejections of claims 1-4, 6-20, 22-34, 36-39, and 41-46.

Respectfully submitted,  
**KRAMER & AMADO, P.C.**

  
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Date: July 20, 2011

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